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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,194	06/22/2001	Anthony J. Kinney	BB1449 US NA	9205

23906 7590 09/27/2004

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

ASHEN, JON BENJAMIN

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/887,194

Examiner

Jon B. Ashen

Applicant(s)

KINNEY ET AL.

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☒ A proposed reply was received on 15 July 2004, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.

The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

092004

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents**DETAILED ACTION****Continued Examination Under 37 CFR 1.114**

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 5/27/2004. The submission, however, is not fully responsive to the prior Office action because Applicant, in filing a request for continued examination under 37 CFR 1.114 is not entitled to switch inventions. MPEP §706.07(h) states that "Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. Any newly submitted claims that are directed to an invention that is independent and distinct from the invention previously claimed will be withdrawn from consideration and not entered. See subsection VI. below. An RCE is not the filing of a new application. Thus, the Office will not convert an RCE to a new application such as an application filed under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d)."

In the instant case, in the Advisory Action of 6/09/2004, the previous examiner indicated that Applicant's proposed amendment of 5/27/2004, if entered, would raise the issue of new matter. This examiner, consequent to an attempt to clarify the potential issue of new matter as raised by Applicant's proposed amendment of 5/27/04, has determined that a) Applicant has requested that the above amendment be entered with their request for continued examination and b) that this amendment, if entered, would constitute a continued examination of the instant application on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right. In the instant case, it appears that applicant has attempted to switch inventions by submission of entirely new claims drawn to an invention that is independent and distinct for the following reasons.

In response to the restriction requirement set forth in the Office action of 10/04/2002, Applicant elected the subject matter of group I in the reply filed 11/6/2002 wherein group I was claims 1,2, 6-12, 16-19 and 45, drawn to a recombinant construct which expresses an RNA comprising an RNA with a region unrelated to any endogenous RNA in the host located 5' to a region with homology to a target mRNA and the reverse complement of the unrelated RNA 3' to the homologous RNA. The limitation "with a region unrelated to any endogenous RNA," as recited in the claims drawn to the elected subject matter, is not recited in Applicant's newly presented claims 46-52, which do not require a region unrelated to any endogenous RNA or that said region unrelated to any endogenous RNA be located either 3' or 5' of a region with homology to a target mRNA. Therefore, it appears that Applicant, in removing the above limitations that require particular positioning of particular nucleotide sequences that must be unrelated to any endogenous RNA in the host, has changed the subject matter in newly presented claims 46-52 such that they are now drawn to a different invention than that previously claimed and examined as a matter of right

Since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a

complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).



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